IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.6.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.408 of 2007

The Commissioner of Income Tax
Trichy. .. Appellant / Respondent

Vs.

S.Kalaivani .. Respondent /Appellant

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 24.11.2006 in ITA No.989/Mds/2006 for the assessment year 1996-97 against the order of the Commissioner of Income Tax (Appeals) No.4 williams road, Contonment, Tiruchirappalli-620 001 dated 27.2.2006 and made in I.T.A.No.104/05-06 against the order of the Assistant Commissioner of Income Tax (OSD) Circle III, Tiruchi dated 30.3.2005 and made in PAN/GIR No.AAQPK 7684Q.

For Appellant : Mr.T.Ravi Kumar, Jr.S.C.

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.989/Mds/2006 dated 24.11.2006, raising the following substantial questions of law.

(a) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that the reassessment made under Section 147 is bad and deleting the addition of Rs.1,46,790/- towards unexplained investment in the construction of a commercial complex at Simco Meters Road Trichy is proper?

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(b) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that Section 142A is not applicable to the facts of the present case for the assessment year 1996-97 especially when Section 142A was inserted by the Finance Act 2004 with retrospective effect from 15.11.1972?

2.1. The revenue is the appellant. The assessee filed her returns on 26.2.1999, which was processed under Section 143(3) of the Act along with the returns for the assessment year 1997-98, considering the investment in building. As the Commissioner of Income Tax (Appeals) directed that unexplained investment in the construction of commercial complex at Simco Meter Road, Trichy had to be assessed in the ratio of 1:3 for the assessment year 1996-97 and 1997-98, fixing the amount for the assessment year 1996-97, a notice under Section 148 of the Act was issued for reassessment. Pursuant to the same, the assessee filed returns on 28.10.2003 and thereafter, notice under Section 143(2) of the Act was issued.

2.2. The assessee also filed a letter requesting to consider the order of the Income Tax Tribunal and that a miscellaneous petition filed before the Tribunal in respect of the above said order is pending. However, the unexplained investment was considered for the assessment year 1996-97 and added to the income returned. Hence, the assessee filed an appeal, which was dismissed by the Commissioner. However, further appeal preferred before the Income Tax Tribunal was allowed on the ground that amendment to Section 142A would not apply, as the order passed on 31.12.2003 in the assessee's own case had become final. Hence, the above appeal.

3. The relevant portion of the order of the Tribunal dated 31.12.2003 made in assessee's own case in ITA No.1499/Mds/2003, reads as follows:

"Consideration of the rival submissions made by both the parties in the light of the facts and circumstances of the case and also in the light of the decision of the Hon'ble Apex Court, which was relied on by the Id. representative of the assessee, we find that the Assessing Officer has failed to exercise the powers conferred on him under Section 133(6) of the Act and/or under Section 142(2) of the I.T.Act. Further, the Assessing Officer has not pointed out any other material which would support his action in adopting the value given in Departmental Valuation Officer's report, which would have based on some bills, vouchers, bank statements etc. In the absence of any concrete material evidence in possession of the Assessing Officer, which could have reflected the value of the property, the value adopted by

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the Assessing Officer based on the D.V.O's report is bad in law and cannot be accepted as held by the Hon'ble Supreme Court in their judgment cited supra. In view of the above discussion, the action of the Assessing Officer in this case cannot be sustained and accordingly we set aside the orders of the lower authorities. Thus the issue in the present case is decided in favour of the assessee."

4. In the instant case, the Tribunal, holding that the said order dated 31.12.2003 had become final, refused to apply the amendment to Section 142A, as nothing was contained in Section 142A in respect of amendment made on or before 30.9.2004 and whether such amendment had become final and concluded on or before that date.

5. However, the learned standing counsel for the revenue contends that the revenue has already filed a miscellaneous petition against the order dated 31.12.2003 and the same is pending and therefore, the said order had not become final and concluded on or before 30.9.2004. Unfortunately, the learned standing counsel is not in a position to place the correct facts as to the date of the filing of miscellaneous petition and whether the said miscellaneous petition is pending or disposed of as on date.

6. That apart, we also notice that the tax effect involved is negligible and as such, the order of the Tribunal does not merit any interference by this Court. Accordingly, the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl

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To

1. The Assistant Registrar
Income Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai-90.

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2. The Commissioner of Income tax
(Appeals) No.4, Williams road
Cantonment, Tiruchirappalli- 620 001.

3. The Assistant Commissioner
of Income Tax (OSD) Circle III, Tiruchi.

4. The Commissioner of Income Tx
Trichy.

1 cc to Mr.N. Muralikumaran, Advocate, sr. 31979

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